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SUBJECT: USUNESCO: INFORMAL BIOETHICS DECLARATION MEETING

1. An explicitly "informal" and ad referendum intersessional meeting on the draft bioethics declaration called by Ambassador Sader, President of the Intergovernmental Meeting of Experts, was held at UNESCO on May 17. The meeting was organized around a non-paper written by Sader and distributed at the beginning of the meeting. It set out the issues that need to be considered, organized by topic: "terms and scope," "aims," "principles," and "transversal issues." (The document is not yet available electronically). The meeting was attended by US Mission health attach John Hoff and Ambassador Oliver.

2. There was consensus (but not unanimity) for avoiding a definition of bioethics and instead describing what is covered. (Peru and Bolivia expressed reservations about this approach; Mexico recognized that replacing a definition with a description does not avoid the issues, and said the description must contain the three matters at issue, described below.) There was also consensus for merging Articles 1 and 2. US rep pointed out that this depended on the substance of the resulting provision.

3. There was also general agreement that the substantive disagreement centered on which of the three issues should be addressed in the declaration ("the triptych")-medical, social, and environmental. (These were sometimes referred to as the 4 issues, depending on how so-called bio-piracy and access to health care were counted). Brazil said that the social and environmental issues may not be in the definition of bioethics, but "touch on" bioethical issues. US rep suggested that this approach might offer promise; these other issues are not part of bioethics-access to medicine is not bioethics, but the way care is delivered/researched is-but may touch them (if they "touch," they are outside of bioethical issues and separate from them), and the existence of these issues could be acknowledged without including them in the operative provisions of the declaration. [Any such formulation should incorporate a reference to the other fora that are dealing with these issues.] Canada said these other issues were "linked" to bioethics. Luxembourg said bioethics bears on bio-medical problems, but is "connected" with these other issues.

4. After the break, the discussion turned to Article 3 (Aims). Countries began reintroducing the three items into the body of bioethics through the statement of "aims." India, for instance, said bio-ethics included bringing medicine to people who need it, etc. Peru complained that biodiversity was mentioned in Article 3 but social rights weren't. Turkey wanted to add international companies. Brazil emphasized the word "responsibility." US rep pointed out that putting things into "Aims" makes them matters of bioethics; social issues and biodiversity were not "aims" of bioethics, but a goal for science (to which bioethics should apply to prevent abuses of people). US rep also said that respect for human life had to be in Aims, in which human dignity is included. Canada pointed out the problems in getting into these other areas-UNESCO already has adopted declaration on these things. What would be the relationship among the declarations?

5. After lunch the discussion turned to the "principles." Ambassador Sader said the questions were whether to include social issues, respect for human life, and a reference to "double standards," referring to Saudi Arabia's suggested modifications to Article 5 and Brazil's intervention on this.

Discussion of "transversal" issues

6. US rep pointed out the importance of shall/should and said that even the Canadian approach presented problems: it would take lawyers a lot of work to see what had previously been agreed to as binding; there is a danger of inflation of rights through summarized references; and if there were a

pre-existing obligation, there is no benefit in restating it. Canada emphasized that their "starting point" was the use of "should," that it "may be" all right to use "shall" to refer to an "established legal right," but that this would require "careful drafting." Japan agreed that the word "should" should be used; they pointed out that this does not depend on the nature of a particular article but results from the non-binding nature of the document; they said "shall" presents a problem. Peru suggested that since the document was non-binding, "we have the luxury" of using "shall." Canada then explained the difficulty this presented: even if the document is non-binding, courts may give weight to a principle that is stated in the mandatory terms of "shall." Mexico said that "should" should be used generally except when existing obligations.

17. Ambassador Sader said treatment of human life remains a problem. He suggested including it in the preamble. US rep said that this would not be sufficient, because that would put a primary factor in a subordinate position to other things that were derived from the primary principle. Brazil said the world is split; this is difficult. Japan said we should avoid discussion of this issue. Ambassador Sader said use of "human beings" has been accepted-although a particular context may require otherwise. He also discussed using the preamble for settling controversial issues (in addition to respect for life, discussed separately).

18. Germany said it would present language on scope-including access to health care and biosphere: it would refer to the common responsibility toward other forms of life. US rep said we looked forward to the German wording but should be cautious. Access to health care was not a matter of bioethics. And what does "responsibility" to the biosphere mean? These sound like the creation of undefined duties. Australia said, "Going beyond the US," we have problems with the term "responsibility"-they worried about creating legal rights that the next generation could use.

19. There was discussion of next steps:
1) There will be a Chairman's summary of the meeting; states can respond to it. .
2) Germany will develop and distribute language on scope.
3) By May 27 states must respond to Pierre Sane's letter asking for comments on the IBC draft.
4) There was disagreement about whether to have another intersessional meeting
5) Ambassador Sader will continue consultations (and may convene another, even more informal meeting or may convene another intersessional session).

Two interesting private discussions:

10. (SBU) The Japanese representative said they agree with US on everything but inclusion of respect for life and were waiting further instructions from Tokyo. US rep pointed out that respect for life was simply a statement at the same level of abstraction as other statements in the draft and did not determine a result in any particular application; they need to be persuaded of this. In another discussion, the Indian Ambassador said that abortion had saved the lives of thousands of Indians, and she was confident the US would fold on this issue at the end.

OLIVER